

**MICHIGAN STRATEGIC FUND ACT (EXCERPT)**  
**Act 270 of 1984**

**CHAPTER 8A**

**125.2088 Legislative findings; intent; scope of activities.**

Sec. 88. (1) The legislature finds and declares that the activities authorized under this chapter to encourage diversification of the economy and the creation of jobs in this state are a public purpose and of paramount concern in the interest of the health, safety, and general welfare of the citizens of this state. It is the intent of the legislature that the economic benefits and the creation of jobs resulting from this chapter shall accrue substantially within this state.

(2) Activities authorized under this chapter shall not be considered a project, economic development project, or a product assisted by the fund for purposes of chapter 1 or 2.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

**125.2088a Definitions.**

Sec. 88a. As used in this chapter:

(a) "Advanced automotive, manufacturing, and materials technology" means any technology that involves 1 or more of the following:

(i) Materials with engineered properties created through the development of specialized process and synthesis technology.

(ii) Nanotechnology, including materials, devices, or systems at the atomic, molecular, or macromolecular level, with a scale measured in nanometers.

(iii) Microelectromechanical systems, including devices or systems integrating microelectronics with mechanical parts and a scale measured in micrometers.

(iv) Improvements to vehicle safety, vehicle performance, vehicle production, or environmental impact, including, but not limited to, vehicle equipment and component parts.

(v) A new technology, device, or system that enhances or improves the manufacturing process of wood, timber, or agricultural-based products.

(vi) Any technology that involves an alternative energy vehicle or its components, as alternative energy vehicle is defined under section 2 of the Michigan next energy authority act, 2002 PA 593, MCL 207.822.

(vii) Advanced computing or electronic device technology related to technology described under this subdivision.

(viii) Design, engineering, testing, or diagnostics related to technology described under this subdivision.

(ix) Product research and development related to technology described under this subdivision.

(b) "Advanced computing" means any technology used in the design and development of 1 or more of the following:

(i) Computer hardware and software.

(ii) Data communications.

(iii) Information technologies.

(c) "Alternative energy technology" means applied research or commercialization of new or next generation technology in 1 or more of the following:

(i) Alternative energy technology as that term is defined in section 2 of the Michigan next energy authority act, 2002 PA 593, MCL 207.822.

(ii) Devices or systems designed and used solely for the purpose of generating energy from agricultural crops, residue and waste generated from the production and processing of agricultural products, animal wastes, or food processing wastes, not including a conventional gasoline or diesel fuel engine or retrofitted conventional gasoline or diesel fuel engine.

(iii) A new technology, product, or system that permits the utilization of biomass for the production of specialty, commodity, or foundational chemicals or of novel or economical commodity materials through the application of biotechnology that minimizes, complements, or replaces reliance on petroleum for the production. Alternative energy technology also includes a new technology, product, or system that utilizes wind energy.

(iv) Advanced computing or electronic device technology related to technology described under this subdivision.

(v) Design, engineering, testing, or diagnostics related to technology described under this subdivision.

(vi) Product research and development related to a technology described under this subdivision.

(d) "Applied research" means translational research conducted with the objective of attaining a specific benefit or to solve a practical problem, or other research activity that seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specified problem, question, or issue, with high potential for commercial application to create jobs in this state.

(e) "Basic research" means any original investigation for the advancement of scientific or technological knowledge that will enhance the research capacity of this state in a way that increases the ability to attract to or develop companies, jobs, researchers, or students in this state.

(f) "Commercialization" means the transition from research to the actions necessary to achieve market entry and general market competitiveness of new innovative technologies, processes, and products and the services that support, assist, equip, finance, or promote a person or an entity with that transition.

(g) "Competitive edge technology" means 1 or more of the following:

(i) Life sciences technology.

(ii) Advanced automotive, manufacturing, and materials technology.

(iii) Homeland security and defense technology.

(iv) Alternative energy technology.

(h) "Electronic device technology" means any technology that involves microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; or data and digital communications and imaging devices.

(i) "Fund board" means the board of the Michigan strategic fund described in section 5.

(j) "Homeland security and defense technology" means technology that assists in the assessment of threats or damage to the general population and critical infrastructure, protection of, defense against, or mitigation of the effects of foreign or domestic threats, disasters, or attacks, or support for crisis or response management, including, but not limited to, 1 or more of the following:

(i) Sensors, systems, processes, or equipment for communications, identification and authentication, screening, surveillance, tracking, and data analysis.

(ii) Advanced computing or electronic device technology related to technology described under this subdivision.

(iii) Aviation technology, including, but not limited to, avionics, airframe design, sensors, early warning systems, and services related to technology described under this subdivision.

(iv) Design, engineering, testing, or diagnostics related to technology described under this subdivision.

(v) Product research and development related to technology described under this subdivision.

(k) "Independent peer review expert" means a person or persons selected by the commercialization board with appropriate expertise to conduct an independent, unbiased, objective, and competitive evaluation of activities funded under section 88k. The person or persons shall demonstrate the capability and experience, as appropriate or necessary for the particular activity funded, to do all of the following:

(i) Conduct a highly competitive and intensive, independent, multiphased, peer-review-based evaluation process.

(ii) Employ personnel with appropriate business, scientific, technical, commercial, or other specialized expertise to carry out each aspect of the evaluation process.

(iii) Provide recommendations to or assist the commercialization board in identifying high-quality activities for funding that are likely to result in the development and commercialization of competitive edge technology and job creation in this state. The recommendations shall include all materials used by the independent peer review expert in making the recommendation.

(iv) Assure that any peer review process developed maintains a high level of integrity.

(l) "Institution of higher education" means an institution of higher education or a community or junior college described in section 4, 5, 6, or 7 of article VIII of the state constitution of 1963 or an independent nonprofit degree-granting institution of postsecondary education in this state that is approved by the state board of education.

(m) "Jobs for Michigan investment fund" or "investment fund" means the jobs for Michigan investment fund created in section 88h.

(n) "Life sciences" means science for the examination or understanding of life or life processes, including, but not limited to, all of the following:

(i) Bioengineering.

(ii) Biomedical engineering.

(iii) Genomics.

(iv) Proteomics.

(v) Molecular and chemical ecology.

(vi) Biotechnology, including any technology that uses living organisms, cells, macromolecules,

microorganisms, umbilical cord blood, or substances from living organisms to make or modify a product for useful purposes. Biotechnology or life sciences does not include any of the following:

(A) Activities prohibited under section 2685 of the public health code, 1978 PA 368, MCL 333.2685.

(B) Activities prohibited under section 2688 of the public health code, 1978 PA 368, MCL 333.2688.

(C) Activities prohibited under section 2690 of the public health code, 1978 PA 368, MCL 333.2690.

(D) Activities prohibited under section 16274 of the public health code, 1978 PA 368, MCL 333.16274.

(E) Stem cell research with human embryonic tissue.

(o) "Life sciences technology" means any technology derived from life sciences intended to improve human health or the overall quality of human life, including, but not limited to, systems, processes, or equipment for drug or gene therapies, biosensors, testing, medical devices or instrumentation with a therapeutic or diagnostic value, a pharmaceutical or other product that requires United States food and drug administration approval or registration prior to its introduction in the marketplace and is a drug or medical device as defined by the federal food, drug, and cosmetic act, 21 USC 301 to 399, or 1 or more of the following:

(i) Advanced computing or electronic device technology related to technology described under this subdivision.

(ii) Design, engineering, testing, or diagnostics related to technology or the commercial manufacturing of technology described under this subdivision.

(iii) Product research and development related to technology described under this subdivision.

(p) "Qualified business" means a business entity located in this state.

(q) "Qualified mezzanine fund" means a person or entity primarily engaged in making loans or investments ranging in size from \$250,000.00 to \$6,000,000.00 that is managed by 2 or more individuals with no less than 5 years' direct experience in mezzanine lending or capital investments and that holds investment capital or has commitments from investors other than the fund and at least 2 financial institutions.

(r) "Qualified private equity fund" means a firm principally or primarily engaged in investing in or acquiring businesses that is managed by 2 or more individuals with no less than 5 years of direct experience in private equity investments, and that holds investment capital from investors other than the fund.

(s) "Qualified venture capital fund" means a firm principally or primarily engaged in investing in or acquiring early stage businesses with growth potential that have not yet demonstrated consistent profitability or a proven business model, that is managed by 2 or more individuals with not less than 5 years of direct experience in venture capital, and that holds capital from investors other than the fund.

(t) "Small business" means a business entity formed or doing business in this state, including the affiliates of the business concern, which business entity is independently owned and operated and employs fewer than 250 full-time employees or has gross annual sales of less than \$6,000,000.00.

(u) "21st century investments" means investments in 1 or more of the following:

(i) Commercial loan guarantees under a loan enhancement program operated by the fund.

(ii) Private equity investments under a private equity investment program operated by the fund.

(iii) Venture capital investments under a venture capital investment program operated by the fund.

(iv) Mezzanine investments under a mezzanine investment program operated by the fund.

(v) "Strategic economic investment and commercialization board" or "commercialization board" means the strategic economic investment and commercialization board created in section 88k.

(w) "University technology transfer" means innovative methods to accelerate the creation of start-up companies affiliated with institutions of higher education or the transfer of competitive edge technology research from an institution of higher education to a qualified business in Michigan.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005;—Am. 2006, Act 639, Imd. Eff. Jan. 4, 2007.

**Popular name:** Strategic Fund

## **125.2088b Programs created and operated by fund board; expenditures; use of appropriated or transferred money.**

Sec. 88b. (1) The fund shall create and operate programs authorized under this chapter. The fund board shall determine the annual allocation of money for programs authorized under this chapter and make authorized expenditures or investments from the investment fund of the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, as authorized under this chapter for programs and activities authorized under this chapter.

(2) Money transferred or appropriated by law to the fund for the purposes of carrying out this chapter shall be expended or invested by the fund as authorized by law for the following purposes:

(a) 21st century investments.

(b) Grants and loans approved by the commercialization board under section 88k.

(c) Other programs or activities authorized under this chapter.

(3) Except for the appropriations described in section 88j(3) and as otherwise provided in section 88q, the fund board shall not expend more than the following amounts each year from the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, for the following purposes:

(a) 25% for the loan enhancement program.

(b) 40% for the private equity investment program, the venture capital investment program, and the mezzanine investment program combined.

(c) 70% for competitive edge technology grants and loans under section 88k. The commercialization board shall not authorize the expenditure of more than \$100,000,000.00 of the amount described in this subdivision for basic research over the life of the program.

(4) The commercialization board shall authorize the expenditure of not less than the following amounts described in subsection (3)(c) as follows:

(a) \$40,000,000.00 in the 2005-2006 fiscal year.

(b) \$50,000,000.00 in the 2006-2007 fiscal year.

(c) \$30,000,000.00 in the 2007-2008 fiscal year.

(d) \$25,000,000.00 in the 2008-2009 through the 2011-2012 fiscal years.

(5) Not more than 4% of the annual appropriation as provided by law from the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, may be used for the purposes of administering the programs and activities authorized under this chapter. However, the fund and the fund board shall not use more than 3% of the annual appropriation for administering the programs and activities authorized under this chapter unless the fund board by a 2/3 vote authorizes the additional 1% for administration.

(6) Not more than 5% of the annual appropriation as provided by law from the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, may be used for business development and business marketing costs. Not less than 80% of the funds committed for business development and business marketing costs shall be targeted to persons or entities outside of this state. No funds may be used for any business development and business marketing effort that includes a reference to or the image or voice of an elected state officer or a candidate for elective state office and that is targeted to a media market in Michigan. The fund board shall select all vendors for all marketing expenditures under this chapter by issuing a request for proposal. At a minimum, the request for proposal shall require the responding entities to disclose any conflict of interest, disclose any criminal convictions, disclose any investigations by the internal revenue service or any other federal or state taxing body or court, disclose any pertinent litigation regarding the conduct of the entity, and maintain records and evidence pertaining to work performed. The fund board shall establish a standard process to evaluate proposals submitted as a result of a request for proposal and appoint a committee to review the proposals. The fund or the fund board shall not appoint or designate any person paid or unpaid to a committee to review proposals if that person has a conflict of interest with any potential vendors as determined by the office of the chief compliance officer established in section 88i.

(7) The fund shall not use any money appropriated or transferred for purposes authorized under this chapter to acquire interests in or improve real property. The restriction under this subsection applies only to the fund and not to recipients of expenditures or investments under this chapter.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005;—Am. 2008, Act 175, Imd. Eff. July 8, 2008.

**Popular name:** Strategic Fund

### **125.2088c Duties of fund board.**

Sec. 88c. (1) The fund board shall exercise the duties of a fiduciary with respect to 21st century investments consistent with the purposes of this chapter. The prudent investor rule shall be applied by the fund board and any agent of the fund board in the management of 21st century investments. The prudent investor rule as applied to 21st century investments means that in making 21st century investments, the fund board shall exercise the judgment and care under the circumstances then prevailing that an institutional investor of ordinary prudence, discretion, and intelligence would exercise in similar circumstances in a like position. The fund board shall maintain a reasonable diversification among 21st century investments consistent with the requirements of this chapter.

(2) The fund board shall select qualified private equity funds, qualified venture capital funds, and qualified mezzanine funds by issuing a request for proposal. At a minimum, the request for proposal shall require a responding entity to disclose any conflict of interest, disclose any criminal convictions, disclose any investigations by the internal revenue service, the securities and exchange commission, or any other federal or state taxing or securities regulatory body, or court, or pertinent litigation regarding the conduct of the person

or entity. The fund board shall establish a standard process to evaluate proposals submitted as a result of a request for proposal and appoint a committee to review the proposals.

(3) The fund board shall ensure that a recipient of money under sections 88d, 88e, 88f, and 88g agrees as a condition of receiving the money not to use the money for any of the following:

(a) The development of a stadium or arena for use by a professional sports team.

(b) The development of a casino regulated by this state under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino at which gaming is conducted under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or property associated or affiliated with the operation of either type of casino described in this subdivision, including, but not limited to, a parking lot, hotel, motel, or retail store.

(4) The fund board shall establish requirements to ensure that money expended under sections 88d, 88e, 88f, and 88g shall not be used for any of the following:

(a) Provision of money to a person who has been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(b) Provision of money to a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes. As used in this subdivision, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(c) Provision of money to a business enterprise to induce qualified businesses or small businesses to leave this state.

(d) Provision of money that would contribute to the violation of internationally recognized workers rights, as defined in section 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a country other than the United States, including any designated zone or area in that country.

(e) Provision of money to a corporation or an affiliate of the corporation who is incorporated in a tax haven country after September 11, 2001, while maintaining the United States as the principal market for the public trading of the corporation's stock. As used in this section, "tax haven country" includes a country with tax laws that facilitate avoidance by a corporation or an affiliate of the corporation of United States tax obligations, including Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the principality of Liechtenstein, the principality of Monaco, and the Republic of the Seychelles.

(5) Before adopting a resolution that establishes or substantially changes a 21st century investment program, including any fees, charges, or penalties attached to that program, the fund board shall give notice of the proposed resolution to the governor, to the clerk of the house of representatives, to the secretary of the senate, to members of the senate and house of representatives appropriation committees, and to each person who requested from the fund in writing or electronically to be notified regarding proposed resolutions. The notice and proposed resolution and all attachments shall be published on the fund's internet website. The fund board shall hold a public hearing not sooner than 14 days and not longer than 30 days from the date notice of a proposed resolution is given and offer a person an opportunity to present data, views, questions, and arguments. Members of the fund board or 1 or more persons designated by the fund board who have knowledge of the subject matter of the proposed resolution shall be present at the public hearing and shall participate in the discussion of the proposed resolution. The fund board may act on the proposed resolution no sooner than 14 days after the public hearing. The fund board shall produce a final decision document that describes the basis for its decision. The final resolution and all attachments and the decision document shall be provided to the governor, to the clerk of the house of representatives, to the secretary of the senate, and to members of the senate and house of representatives appropriation committees and shall be published on the fund's internet website.

(6) The notice described in subsection (5) shall include all of the following:

(a) A copy of the proposed resolution and all attachments.

(b) A statement that the addressee may express any data, views, or arguments regarding the proposed resolution.

(c) The address to which written comments may be sent and the date by which comments must be mailed or electronically transmitted, which date shall not be before the date of the public hearing.

(d) The date, time, and place of the public hearing.

(7) The fund board shall employ or contract with a fund manager or other persons it considers necessary to



implement this section. The person employed or contracted under this subsection shall have not less than 10 years' experience in commercial lending, private equity, mezzanine funding, or venture capital. The person employed or contracted under this section shall exercise the duties of a fiduciary toward investments from the investment fund under this section. Management fees payable by the fund and other investors in a qualified private equity fund, a qualified mezzanine fund, or a qualified venture capital fund shall be considered an investment expense and not an administrative cost incurred by the fund.

(8) Subject to subsection (9), a record received, prepared, used, or retained by an investment fiduciary in connection with an investment or potential investment of the investment fund that relates to investment information pertaining to a portfolio company in which the investment fiduciary has invested or has considered an investment that is considered by the portfolio company and acknowledged by the investment fiduciary as confidential, or that relates to investment information whether prepared by or for the investment fiduciary regarding loans and assets directly owned by the investment fiduciary and acknowledged by the investment fiduciary as confidential, is exempt from the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, if at least annually the fund provides to the fund board, and makes available to the public, a report of fund investments during the prior state fiscal year that includes all of the following:

(a) The name of each portfolio company in which the investment fund invested during the reporting period.

(b) The aggregate amount of money invested by the investment fund in portfolio companies during the reporting period.

(c) The rate of return realized during the reporting period on the investments of the investment fund in portfolio companies.

(d) The source of any public funds invested by the investment fund in portfolio companies during the reporting period.

(9) If a record described in subsection (8) is an agreement or instrument to which an investment fiduciary is a party, only those parts of the record that contain investment information are exempt from the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) As used in subsections (8) and (9):

(a) "Investment fiduciary" means a person who exercises any discretionary authority or control over an investment of the investment fund or renders investment advice for the fund for a fee or other direct or indirect compensation.

(b) "Investment information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause a portfolio company or an investment fiduciary significant competitive harm. Investment information includes, but is not limited to, financial performance data and projections, financial statements, list of coinvestors and their level of investment, product and market data, rent rolls, and leases.

(c) "Portfolio company" means an entity in which an investment fiduciary has made or considered an investment on behalf of the investment fund.

(d) "Record" means all or part of a writing, as that term is defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

### **125.2088d Loan enhancement program; loan guarantee program; small business capital access program; Michigan film and digital media investment loan program; choose Michigan film and digital media loan fund; choose Michigan fund program; definitions.**

Sec. 88d. (1) The fund shall create and operate a loan enhancement program.

(2) As a separate and distinct part of the loan enhancement program, the fund may create a loan guarantee program that does all of the following:

(a) Provide a loan guarantee mechanism to financial institutions located in this state that provide commercial loans to qualified businesses, public authorities, and local units of government.

(b) Ensures that participating financial institutions do not refinance prior debt.

(c) Provide that a qualified business is only eligible for a loan guarantee under this section if it has a documented growth opportunity. As used in this subdivision, "documented growth opportunity" means a plant expansion, capital equipment investment, acquisition of intellectual property or technology, or the hiring of new employees to meet or satisfy a new business opportunity.

(d) Provide that a qualified business that engages primarily in retail sales is not eligible for a loan guarantee under this chapter unless the fund board makes a specific finding that the loan guarantee supports a new concept that has significant growth potential.

(e) Provide repayment provisions for a loan or a guarantee given to a qualified business that leaves Michigan within 3 years of the provision of the loan or guarantee or otherwise breaches the terms of an agreement with the fund.

(3) As a separate and distinct part of the loan enhancement program, the fund shall reestablish the small business capital access program that was previously operated by the fund for small businesses in a manner similar to how that program was operated before January 1, 2002. The small business capital access program shall operate on a market-driven basis and provide for premium payments by borrowers into a special reserve fund. The small business capital access program established by the board shall prohibit an officer, director, principal shareholder of a participating financial institution, or his or her immediate family members from receiving a small business capital access program loan from the financial institution. A loan under the small business capital access program may be issued to an eligible production company or film and digital media private equity fund even if the eligible production company or film and digital media private equity fund is not a small business. A loan under the small business capital access program shall provide that the proceeds of a loan may only be used for a business purpose within this state and may not be used for any of the following:

(a) The construction or purchase of residential housing.

(b) To finance passive real estate ownership.

(c) To refinance prior debt from the participating financial institution that is not part of the small business capital access program.

(4) As a separate and distinct part of the loan enhancement program, the fund shall establish a Michigan film and digital media investment loan program to invest in loans from the investment fund to eligible production companies or film and digital media private equity funds. The fund board shall make investments under this subsection only upon approval of the chief compliance officer and the Michigan film office after a review by the investment advisory committee. If an investment is made under this section, not more than \$15,000,000.00 may be loaned to any 1 eligible production company or film and digital media private equity fund for any 1 qualified production. The fund board may make an investment in a qualified production if all of the following are satisfied:

(a) The production is filmed wholly or substantially in this state.

(b) The eligible production company or the film and digital media private equity fund has shown to the satisfaction of the Michigan film office that a distribution contract or plan is in place with a reputable distribution company.

(c) The eligible production company or film and digital media private equity fund agrees that, while filming in this state, a majority of the below the line crew for the qualified production will be residents of this state.

(d) The eligible production company or film and digital media private equity fund posts a completion bond approved by the Michigan film office and has obtained no less than 1/3 of the estimated total production costs from other sources as approved by the chief compliance officer and the Michigan film office or has obtained a full, unconditional, and irrevocable guarantee of the repayment of the amount invested by the fund in favor of the investment fund that satisfies 1 or more of the following:

(i) The guarantee is from an entity that has a credit rating of not less than BAA or BBB from a national rating agency.

(ii) The guarantee is from a substantial subsidiary of an entity that has a credit rating of not less than BAA or BBB from a national rating agency.

(iii) The eligible production company or the film and digital media private equity fund provides a full, unconditional letter of credit from a bank with a credit rating of not less than A from a national rating agency.

(iv) The guarantee is from a substantial and solvent entity as determined by the investment advisory committee.

(e) The fund board may make a loan under this subsection at a market rate of interest for a qualified production of up to 80% of expected and estimated tax credits available to the eligible production company or film and digital media private equity fund under sections 455 to 459 of the Michigan business tax act, 2007 PA 36, MCL 208.1455 to 208.1459, if the eligible production company or the film and digital media private equity fund agrees to name the fund as its agent for the purpose of filing for the tax credits should the eligible production company not apply for the tax credits. The Michigan film office and the state treasurer shall determine the estimated amount of tax credits for purposes of this subsection. The fund board shall approve guidelines for the initiation of a loan and the terms of the loan under this subsection.

(f) A loan under this subsection may be converted to an equity investment by the fund board with the approval of the chief compliance officer and the Michigan film office.

(g) An eligible production company or film and digital media production company that receives a loan under this subsection is not also eligible for a loan for the same qualified production under subsection (5).

(h) Fifty percent of any earnings on a loan or investment under this subsection shall be deposited in the investment fund and the remainder of the earnings shall be deposited in the Michigan film promotion fund created under chapter 2A. One hundred percent of principal repaid under this subsection shall be deposited in the investment fund upon repayment.

(5) As a separate and distinct part of the loan enhancement program, the fund shall establish and operate the choose Michigan film and digital media loan fund to invest in loans from the investment fund to eligible production companies or film and digital media private equity funds eligible for a tax credit under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, or sections 455 to 459 of the Michigan business tax act, 2007 PA 36, MCL 208.1455 to 208.1459. The fund board shall make investments under this subsection only upon approval of the chief compliance officer and the Michigan film office. A loan issued under this subsection is subject to all of the following requirements:

(a) A loan shall be provided at an interest rate of not less than 1%.

(b) The minimum amount of a loan under this subsection is \$500,000.00.

(c) The maximum term of a loan under this subsection is 10 years, including up to 3 years of deferred principal payments to align principal payments with receipt of primary incentives, as determined by the fund board.

(d) The value of the loan may not exceed the value of the primary incentive that the eligible production company or film and digital media private equity fund is eligible to receive over 7 years, as discounted by the fund board. A loan authorized by the fund board may provide for a loan amount equal to a portion or all of the discounted value of the primary incentives, as discounted by the fund board.

(e) The eligible production company or film and digital media private equity fund is responsible for repayment of the loan regardless of actual primary incentive amounts received.

(f) The eligible production company or film and digital media private equity fund is responsible for loan preparation and closing costs.

(g) An eligible production company or film and digital media private equity fund that receives a loan under this subsection is not also eligible for a loan for the same qualified production under subsection (4).

(h) The eligible production company or film and digital media private equity fund also obtains an additional loan from an accredited financial institution or other approved lending market.

(i) The loan shall be issued consistent with guidelines for the initiation of a loan and the terms of the loan under this subsection approved by the fund board.

(j) Fifty percent of any earnings on a loan under this subsection shall be deposited in the investment fund and the remainder of the earnings shall be deposited in the Michigan film promotion fund created under chapter 2A. One hundred percent of principal repaid under this subsection shall be deposited in the investment fund upon repayment.

(6) As a separate and distinct part of the loan enhancement program, the fund shall operate the choose Michigan fund program to invest in loans from the investment fund to a qualified business. The choose Michigan fund program shall operate on an incentive basis and shall provide loans to qualified businesses to promote and enhance significant job creation or retention within this state. The choose Michigan fund shall not make a loan under this subsection after September 30, 2008. Notwithstanding any requirement imposed by the fund before April 1, 2008, to receive a loan under this subsection, the fund board may or may not require a qualified business to obtain an additional loan from an accredited financial institution or other approved lending market to obtain a loan under this subsection. At the discretion of the fund board, not more than 2 loans provided through the choose Michigan fund may be forgivable. A loan issued under this subsection is subject to all of the following requirements:

(a) A loan shall be provided at an interest rate of not less than 1%.

(b) The minimum amount of a loan under this subsection is \$500,000.00.

(c) The maximum term of a loan under this subsection is 10 years, including up to 3 years of deferred principal payments to align principal payments with receipt of any primary incentives, as determined by the fund board.

(d) Except as provided in subdivision (g), the qualified business is responsible for repayment of the loan regardless of any primary incentives received.

(e) The qualified business is responsible for loan preparation and closing costs.

(f) The loan shall be issued consistent with guidelines for the initiation of a loan and the terms of the loan under this subsection approved by the fund board.

(g) A loan under this subsection may be converted to an equity investment by the fund board.

(h) The loan shall be subject to repayment provisions. If the loan is with a qualified business that closes down or relocates outside of Michigan anytime within 3 years after the term of the loan, then the provisions of the loan shall also include, at a minimum, immediate repayment of any outstanding principal, payment of a



default interest rate, and repayment of any amounts forgiven.

(i) In determining whether to forgive all or a portion of a loan to a qualified business, the fund shall consider the net economic impact of the project on the state's economy. The loan agreement between the fund and the qualified business shall clearly enumerate the terms, conditions and requirements under which all or a portion of the loan may be forgiven, including, but not limited to, job creation and investment in this state.

(7) As used in this section:

(a) "Below the line crew" means that term as defined under section 459 of the Michigan business tax act, 2007 PA 36, MCL 208.1459.

(b) "Eligible production company" means that term as defined under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455.

(c) "Film and digital media private equity fund" means any limited partnership, limited liability company, or corporation organized and operating in the United States that satisfies all of the following:

(i) Has as its primary business activity the investment of funds in return for equity in qualified productions.

(ii) Holds out the prospect for capital appreciation from the investments.

(iii) Accepts investments only from accredited investors as that term is defined in section 2 of the federal securities act of 1963 and rules promulgated under that act.

(d) "Investment advisory committee" means the committee created within the department under section 91 of the executive organization act of 1965, 1965 PA 380, MCL 16.191.

(e) "Michigan film office" means the office created under chapter 2A.

(f) "Primary incentive" means a tax credit an eligible production company is eligible to receive under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, or under sections 455 to 459 of the Michigan business tax act, 2007 PA 36, MCL 208.1455 to 208.1459.

(g) "Qualified production" means that term as defined under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005;—Am. 2008, Act 80, Imd. Eff. Apr. 8, 2008;—Am. 2008, Act 223, Imd. Eff. July 16, 2008.

**Popular name:** Strategic Fund

### **125.2088e Private equity investment program.**

Sec. 88e. When creating programs for 21st century investments under this chapter, the fund shall create and operate a private equity investment program. The fund board shall authorize investments only in or alongside a qualified private equity fund. The private equity investment program shall do all of the following:

(a) Provide that the return on investment that is sought is greater than the return on investment under the commercial loan portion of the loan enhancement program to reflect the greater risk.

(b) Provide that the qualified private equity fund will have an amount at risk greater than the fund's investment.

(c) Provide that a qualified private equity fund is not eligible to participate in a private equity investment program unless it operates a business development office in this state staffed with at least 1 full-time equivalent employee who is actively seeking opportunities for investments in businesses located in this state unless the investment opportunity requested by the qualified private equity fund is targeted to a specific transaction that will save jobs and will not occur without the fund's investment as determined by the fund board.

(d) Provide that a qualified private equity fund is not eligible to participate in a private equity investment program unless it agrees to make investments in this state at a percentage rate that is not less than the percentage rate that the fund's investment in the qualified private equity fund bears to the total amount in the qualified private equity fund.

(e) Provide that a qualified private equity fund is not eligible to participate in a private equity investment program if its investment strategy provides for the breakup and liquidation of businesses. The fund board shall make sure that the agreements with a private equity fund have the appropriate provisions to prohibit the actions described in this subdivision.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

### **125.2088f Venture capital investment program.**

Sec. 88f. When creating programs for 21st century investments under this chapter, the fund shall create and operate the venture capital investment program. The fund board shall authorize investments that shall invest only in or alongside a qualified venture capital fund that invests primarily in early stage businesses. The venture capital investment program shall do all of the following:

(a) Provide that the return on investment that is sought is greater than the return on investment under the commercial loan portion of the loan enhancement program to reflect the greater risk.

(b) Provide that the qualified venture capital fund will have an amount at risk greater than the fund's investment.

(c) Provide that a qualified venture capital fund is not eligible to participate in a venture capital investment program unless it operates a business development office in this state staffed with at least 1 full-time equivalent employee who is actively seeking opportunities for venture capital investments in businesses located in this state unless the investment opportunity requested by the qualified venture capital fund is targeted to a specific transaction involving a competitive edge technology that will not occur without the fund's investment as determined by the fund board.

(d) Provide that a qualified venture capital fund is not eligible to participate in a venture capital investment program unless it agrees to make venture capital investments in this state at a percentage rate that is not less than the percentage rate that the fund's investment in the qualified venture capital fund bears to the total amount in the qualified venture capital fund.

(e) Provide that a qualified venture capital fund is not eligible to participate in a venture capital investment program if its investment strategy provides for the breakup and liquidation of businesses. The fund board shall make sure that the agreements with a venture capital fund have the appropriate provisions to prohibit the actions described in this subdivision.

(f) Coordinate with the Michigan early stage venture investment fund as defined in section 3 of the Michigan early stage venture investment act of 2003, 2003 PA 296, MCL 125.2233, to ensure that a continuum of venture capital is available in this state.

(g) Provide that 80% of the funds allocated to a venture capital investment program shall focus on competitive edge technologies.

(h) Provide that a qualified venture capital fund may make follow-up investments that were eligible for investment at the time of initial investment but that subsequently may not be characterized as an investment in an early stage business.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

### **125.2088g Mezzanine investment program.**

Sec. 88g. When creating programs for 21st century investments under this chapter, the fund shall create and operate a mezzanine investment program. The fund board shall authorize investments in or alongside a qualified mezzanine fund under a mezzanine investment program providing for all of the following:

(a) That the return on investment that is sought is greater than the return on investment under the commercial loan portion of the loan enhancement program to reflect the greater risk.

(b) That the qualified mezzanine fund will have an amount at risk greater than the fund's investment.

(c) That a qualified mezzanine fund is not eligible to participate in a mezzanine investment program unless it operates a business development office in this state staffed with at least 1 full-time equivalent employee who is actively seeking opportunities for mezzanine investments in businesses located in this state.

(d) That a qualified mezzanine fund is not eligible to participate in a mezzanine investment program unless it agrees to make mezzanine investments in this state at a percentage rate that is not less than the percentage rate that the fund's investment in the qualified mezzanine fund bears to the total amount in the qualified mezzanine fund.

(e) That a qualified mezzanine fund is not eligible to participate in a mezzanine investment program if its investment strategy provides for the breakup and liquidation of businesses. The fund board shall make sure that the agreements with a qualified mezzanine fund have the appropriate provisions to prohibit the actions described in this subdivision.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

### **125.2088h Investment fund; creation; duties.**

Sec. 88h. (1) The jobs for Michigan investment fund is created within the fund as a permanent fund authorized by section 19 of article IX of the state constitution of 1963. Money in the investment fund at the close of the fiscal year shall remain in the investment fund and shall not lapse to the general fund. Money in the investment fund shall not be transferred to another governmental entity or a separate legal entity and public body corporate established under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, except as authorized in this chapter.

(2) Money or other assets deposited in the investment fund shall be held as permanent funds as provided

under section 19 of article IX of the state constitution of 1963 and invested only as authorized under this chapter, including, but not limited to, investments in the stock of a company, association, or corporation.

(3) The investment fund shall be invested as authorized under this chapter for the benefit of the people of the state of Michigan and for the purpose of creating incentives for the following in this state:

- (a) Diversifying the economy.
- (b) Retaining or creating jobs.
- (c) Increasing capital investment activity.
- (d) Increasing commercial lending activity.
- (e) Encouraging the development and commercialization of competitive edge technologies.

(4) Funds or other assets of the investment fund also may be invested in debt instruments or debt obligations for loans or guarantees authorized under this chapter.

(5) The investment fund shall consist of all of the following:

(a) Any funds appropriated to, transferred to, or deposited in the investment fund from the 21st century jobs trust fund under the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.256.

(b) Earnings, royalties, return on investments, return of principal, payments made, or other money received by or payable to the fund under agreements related to grants, loans, investments, or expenditures by the fund under this chapter.

(c) Assets, property, money, earnings, royalties, return on investments, return of principal, payments made, or other money owed, received by, or payable to the fund or the Michigan economic development corporation under agreements related to grants, loans, investments, or other payments funded by appropriations from the state general fund or tobacco settlement revenue under 1 or more of the following:

(i) Section 418 of 1999 PA 120, commonly known as the health and aging research and development initiative or the Michigan life sciences corridor initiative, or any successor program.

(ii) Section 410 of 2000 PA 292, commonly known as the health and aging research and development initiative or the Michigan life sciences corridor initiative, or any successor program.

(iii) Section 410 of 2001 PA 80, commonly known as the health and aging research and development initiative or the Michigan life sciences corridor initiative, or any successor program.

(iv) Section 410 of 2002 PA 517, commonly known as the Michigan life sciences corridor initiative, or any successor program.

(v) Section 410 of 2003 PA 169, commonly known as the Michigan life sciences and technology tri-corridor initiative, or any successor program.

(vi) Section 510 of 2004 PA 354, commonly known as the Michigan technology tri-corridor and life sciences initiative, or any successor program.

(vii) Section 801 of 2005 PA 11, commonly known as the technology tri-corridor and life sciences initiative, or any successor program.

(viii) Section 381(1)(c) of 2003 PA 173, providing for payments to the life sciences commercial development fund.

(d) Money or assets received by the state treasurer or the fund from any source for deposit in the investment fund.

(e) Interest and earnings on any funds or other assets deposited in the investment fund or other net income of the investment fund.

(6) The net income of the investment fund may be expended by the fund only for purposes authorized under this chapter pursuant to an appropriation authorized by law. As used in this section, the net income of the investment fund shall be computed annually as of the last day of the state fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses.

(7) The fund board shall be the trustees of the investment fund and shall direct the investment and reinvestment of the funds and assets of the investment fund as provided under, and consistent with the objectives of, this chapter.

(8) The fund board may establish restricted subaccounts within the investment fund as necessary to administer the investment fund. The fund board may contract with the state treasurer to assist the fund board in administering the investment fund. The fund board may authorize money in the investment fund not invested as authorized under sections 88d, 88e, 88f, and 88g to be managed by the state treasurer as part of the common cash fund of this state under 1967 PA 55, MCL 12.51 to 12.53. Money managed by the state treasurer under this subsection shall be separately accounted for by the state treasurer. When authorized under this subsection, the state treasurer may invest the funds or assets of the investment fund in any investment authorized under 1855 PA 105, MCL 21.141 to 21.147, for surplus funds of this state, in obligations issued by any state or political subdivision or instrumentality of the United States, or in any obligation issued, assumed, or guaranteed by a solvent entity created or existing under the laws of the United States or of any state,

district, or territory of the United States, which are not in default as to principal or interest.

(9) A member of the fund board or officer of the fund shall not gain from any investment of funds or assets of the investment fund. A member of the fund board or officer of the fund shall not have any direct or indirect interest in an investment of funds or assets of the investment fund. A member of the fund board or person connected with the investment fund directly or indirectly, for himself or herself, or as an agent or partner of others, shall not borrow any of the funds or assets of the investment fund or in any manner use funds or assets of the investment fund except as authorized under this chapter. A member of the fund board or officer of the fund shall not become an endorser or surety or become in any manner an obligor for money loaned by or borrowed from the investment fund. Failure to comply with this subsection constitutes misconduct in office subject to removal under section 94.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

### **125.2088i Office of chief compliance officer.**

Sec. 88i. (1) The office of the chief compliance officer is created within the fund. The office shall exercise its powers and duties under this section independently of the fund.

(2) The office shall assist the fund board with the creation, implementation, monitoring, and enforcement of policies and procedures to prevent illegal, unethical, or improper conduct on the part of fund board members, commercialization board members and employees, or agents of the fund board and commercialization board in carrying out their duties under this chapter.

(3) The principal executive officer of the office is the chief compliance officer. The state administrative board shall be the appointing authority of the chief compliance officer.

(4) A person may not interfere with, prevent, or prohibit the chief compliance officer from carrying out his or her duties as established in this section and set by the state administrative board. The chief compliance officer is an employee for purposes of the whistleblowers' protection act, 1980 PA 469, MCL 15.361 to 15.369.

(5) All departments, state agencies, committees, commissioners, or officers of this state, the MEDC, and any political subdivision of this state, so far as is compatible with their duties, shall give the chief compliance officer any necessary assistance required by the chief compliance officer in the performance of the duties of the chief compliance officer. All departments, state agencies, committees, commissioners, or officers of this state, the MEDC, and any political subdivision of this state shall provide the chief compliance officer free access to any book, record, or document in their custody, relating to the matters within the scope of the chief compliance officer in the performance of his or her duties.

(6) The chief compliance officer shall do all of the following:

(a) Recommend policies and procedures, including, but not limited to, a conflict of interest policy, an investment policy, and an ethics policy to the fund board and the commercialization board that shall protect the state's assets consistent with the requirements of this chapter and applicable state and federal law. The chief compliance officer shall also assist in the design of the policies and procedures that will prevent violations from occurring, detect violations that have occurred, and correct such violations promptly.

(b) Assist employees and agents of the board and the commercialization board to ensure that they are in compliance with internal policies and procedures and with applicable state and federal law.

(c) Provide guidance to the board, the commercialization board, and employees of the board and the commercialization board on matters related to compliance with internal policies and procedures and with applicable state and federal law.

(d) Make recommendations to the board, the commercialization board, and employees of the board and the commercialization board regarding the appropriate evaluation, investigation, and resolution of issues and concerns regarding compliance with internal policies and procedures and with applicable state and federal law.

(e) Review and evaluate compliance with internal policies and procedures and with applicable state and federal law.

(f) Cooperate with the office of the auditor general as the auditor general carries out his or her duties.

(g) Report quarterly to the fund board and the state administrative board regarding compliance with internal policies and procedures and with applicable state and federal law.

(h) Contact persons receiving awards, investments, grants, and loans under this chapter to the extent necessary to carry out responsibilities under this chapter.

(i) Prepare a written annual report that evaluates compliance with internal policies and procedures and with applicable state and federal law, explains any compliance matters that arose during the previous year, and suggests revisions to agency policies and procedures. Copies of the report shall be provided to the governor,

the clerk of the house of representatives, the secretary of the senate, the chairpersons of the senate and house of representatives committees on commerce, and the chairpersons of the senate and house of representatives committees on appropriations. The annual report shall also be published on the fund's internet website.

(j) Do all other things necessary to carry out the chief compliance officer's responsibilities under this section.

(7) As used in this section, "office" means the office of the chief compliance officer.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

### **125.2088j Disbursements.**

Sec. 88j. (1) Upon request from the fund board, the state treasurer shall transfer appropriated funds from the 21st century jobs trust fund to the fund in the amounts designated by the fund board at the time and as necessary to fund disbursements or reserves required for programs or activities authorized under this chapter or to fund investments authorized by the fund board from the investment fund. Funds appropriated or transferred to the fund shall not be transferred to another governmental entity or a separate legal entity and public body corporate established under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, except as authorized under this chapter.

(2) For the fiscal year ending September 30, 2006, there is appropriated and transferred from the 21st century jobs trust fund to the fund \$400,000,000.00 for the purposes of carrying out the purposes of this chapter.

(3) From the funds appropriated and transferred in subsection (2), the fund shall make the following commitments, dispersible as provided in subsection (1):

(a) \$26,000,000.00 as a grant to the Michigan forest finance authority for purposes under part 505 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.50501 to 324.50522. The money shall be spent only as provided by the Michigan forest finance authority.

(b) \$10,000,000.00, up to 1/2 in loans, to support the development and creation of a defense contract coordination center program to assist Michigan companies in securing more federal defense and homeland security procurement contracts. This program shall include, but is not limited to, providing low-interest rate loans to support the expansion of manufacturing operations in order to fulfill federal procurement contracts. The loan repayments shall return to the investment fund.

(c) \$4,000,000.00 as follows:

(i) \$3,000,000.00 for a private research institute that has received a specific federal appropriation prior to 2005 for the creation of a good manufacturing facility. The facility shall be used for the production of drugs approved for use in clinical trials, as approved by the United States food and drug administration, and shall work to market the core technology alliance for the purposes of commercialization and providing access to advanced technologies to researchers affiliated with universities, private research institutes, and biotech and pharmaceutical firms.

(d) \$6,000,000.00 for an automotive technology business accelerator to provide for the research, development, and commercialization of innovative technologies and products. The funds shall be used to support international business development, encourage development of competitive edge technologies through the creation of early stage seed funds, and support the outreach and growth of technology based businesses and professionals.

(e) \$2,000,000.00 for the Michigan film office to promote the filming of motion pictures in this state. No funds may be used to promote the filming of a motion picture that depicts obscene matter or an obscene performance. As used in this subdivision, "obscene matter or an obscene performance" means obscene material, the dissemination of which is a violation of 1984 PA 343, MCL 752.361 to 752.374. The Michigan film office created under section 21 of the history, arts, and libraries act, 2001 PA 63, MCL 399.721, shall use the funds in the following manner:

(i) To hire an independent firm to conduct a baseline study that will accurately demonstrate Michigan's status within the film industry and include recommendations of necessary improvements for Michigan to attract motion pictures.

(ii) To market and promote Michigan as a premiere location for filming motion pictures, commercials, and documentaries. Marketing and promoting include, but are not limited to, website development, promotional and research expenses, event and festival sponsorship, and advertising.

(iii) Assist in workforce development within the film industry by supporting on-the-job training of qualified crew members. Job training of film and media technicians includes, but is not limited to, technical training, practical training, and internship opportunities.

(f) \$2,000,000.00 to implement the transfer of competitive edge technology research from institutions of



higher education to the private sector as provided in this chapter.

(g) \$15,000,000.00 for a Michigan promotion program to enhance funding beyond that included in the annual appropriation for travel Michigan to attract additional tourism expenditures in this state. No funds may be used for any tourism marketing effort that includes the image of an elected state officer or a candidate for elective state office that is targeted to a media market in Michigan.

(h) \$10,000,000.00 to the agricultural development fund created in section 2 of the Julian-Stille value-added act, 2000 PA 322, MCL 285.302, for grants and loans. The money shall not be spent until after April 1, 2006. As used in this subdivision, "specialty crop" means any agricultural crop, except wheat, feed grains, oilseeds, cotton, rice, peanuts, and tobacco.

(i) \$3,500,000.00 to implement the capital access program.

(j) \$90,000,000.00 for life sciences technology as provided in this chapter.

(4) \$16,000,000.00 of the appropriation made in subsection (2) may be expended for administrative costs related to the administration of programs or activities authorized under this chapter. However, the fund and the fund board shall not expend more than \$12,000,000.00 for administration of programs or activities authorized under this chapter unless the fund board by a 2/3 vote authorizes the additional \$4,000,000.00 for administration.

(5) \$20,000,000.00 of the appropriation made in subsection (2) may be expended for business development and business marketing costs. Not less than 80% of the funds committed for business development and business marketing costs shall be targeted to persons or entities outside of this state. No funds shall be used for any business development and business marketing effort that includes a reference to or the image or voice of an elected state officer or a candidate for elective state office and that is targeted to a media market in this state. The fund board shall select all vendors for all marketing expenditures under this chapter by issuing a request for proposal. At a minimum, the request for proposal shall require the responding entities to disclose any conflict of interest, disclose any criminal convictions, disclose any investigations by the internal revenue service or any other federal or state taxing body or court, disclose any pertinent litigation regarding the conduct of the entity, and maintain records and evidence pertaining to work performed. The fund board shall establish a standard process to evaluate proposals submitted as a result of a request for proposal and appoint a committee to review the proposals.

(6) Following the disbursements described in subsections (3), (4), and (5), the remaining money shall be allocated pursuant to section 88b(1).

(7) The appropriation authorized in subsection (2) is a work project appropriation and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to provide substantial economic benefits and job creation within this state and to create incentives for the diversification of the economy of this state through 21st century investments, grants and loans approved by the commercialization board under section 88k, and other programs or activities authorized under this chapter.

(b) The work project will be accomplished through the use of interagency agreements, grants, loans, investments, state employees, and contracts.

(c) The total estimated completion cost of the work project is \$400,000,000.00.

**History:** Add. 2005, Act 225, Imd. Eff. Nov. 21, 2005.

**Compiler's note:** Subparagraph (3)(c)(ii), as added by 2005 PA 225, and which read "\$1,000,000.00 to the core technology alliance to implement and fund a grant program for early drug discoveries." was vetoed by the governor November 21, 2005.

The second sentence of subdivision (3)(h), as added by 2005 PA 225, and which read "Not less than \$5,000,000.00 shall be awarded as specialty crop grants and loans.", was vetoed by the governor November 21, 2005.

**Popular name:** Strategic Fund

**125.2088k Strategic economic investment and commercialization board; creation; powers, duties, and authority; award of grants and loans; duties of fund; standards for expenditures of money; prohibited expenditures; reasons for selection of grant recipient; resolution establishing or changing program; notice.**

Sec. 88k. (1) The strategic economic investment and commercialization board is created within the fund. The commercialization board shall exercise its powers, duties, and decision-making authority under this chapter independently of the fund, the fund board, and the department of treasury.

(2) The commercialization board shall award grants and loans from the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.256, and the investment fund only for basic research, applied research, university technology transfer, and commercialization of products, processes, and services to encourage the development of competitive edge technologies to create jobs in this state.

(3) Subject to subsection (2), the fund as determined by the commercialization board shall do all of the following:

(a) Establish a competitive process to award grants and make loans for competitive edge technologies. The competitive process shall include, but is not limited to, the following:

(i) A provision that the applications must be peer-reviewed by independent peer review experts based on the scientific and technical merit, personnel expertise, commercial merit, and the ability to leverage additional funding of the application. Scientific and technical merit, personnel expertise, commercial merit, and the ability to leverage additional funding shall be given equal weight in the review and scoring process.

(ii) A preference for proposals that can contribute to the development of economic diversification or the creation of employment opportunities in this state.

(iii) A provision that out-of-state business must have a significant existing or proposed business presence in this state.

(iv) A provision that the program will utilize contracts with measurable milestones, clear objectives, provisions to revoke awards for breach of contract, and repayment provisions for loans given to qualified businesses that leave Michigan within 3 years of the execution of the contract or otherwise breach the terms of the contract.

(v) A provision that the applicant leverage other resources as a condition of the grant or loan. If an applicant is seeking a grant or a loan under this chapter to match federal funds for small business innovation research or small business technology transfer programs, the grant or loan under this chapter shall not exceed 25% of the federal funds and must leverage third-party commercialization funding at both the phase I and phase II levels.

(vi) Limit overhead rates for recipients of grants and loans to reflect actual overhead but not greater than 15% of the grant or loan.

(vii) Except as provided in subparagraph (v), a provision that grants can only be awarded to Michigan institutions of higher education, Michigan nonprofit research institutions, and Michigan nonprofit corporations.

(viii) A preference for collaborations between institutions of higher education, Michigan nonprofit research institutions, Michigan nonprofit corporations, and qualified businesses.

(ix) A provision authorizing the award of grants to institutions of higher education to serve as match to promote or secure the award and receipt of competitively awarded federal research grants related to competitive edge technologies. A matching grant shall not exceed 10% of the amount of the competitively awarded federal research grants received.

(x) A provision encouraging the redevelopment of existing scientific wet lab space for the commercialization of life science technology.

(xi) A preference for proposals that meet 1 or more of the following:

(A) Forecast revenues within 2 years.

(B) Have outside investments from investors with experience and management teams with experience in the industry targeted by the proposal.

(C) Have outside directors with expertise in the industry targeted by the proposal.

(b) The fund shall contract with independent peer review experts selected by the commercialization board to assist the commercialization board with its responsibilities under this chapter.

(4) The commercialization board shall establish standards to ensure that money expended under this chapter will result in economic benefit to this state and ensure that a major share of the business activity resulting from the expenditures occurs in this state.

(5) The commercialization board shall ensure that a recipient of money expended under this chapter agrees as a condition of receiving the money not to use the money for any of the following:

(a) The development of a stadium or arena for use by a professional sports team.

(b) The development of a casino regulated by this state under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, a casino at which gaming is conducted under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, or property associated or affiliated with the operation of either type of casino described in this subdivision, including, but not limited to, a parking lot, hotel, motel, or retail store.

(6) The commercialization board shall establish requirements to ensure that money expended under this section shall not be used for any of the following:

(a) Grants or loans to a person who has been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract. As used in this subdivision, if a person is a business entity, then person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(b) Grants or loans to a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes. As used in this subdivision, if a person is a business entity, then person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more.

(c) Grants or loans to induce a qualified business or a small business to leave this state.

(d) Grants or loans that would contribute to the violation of internationally recognized workers rights, as defined in section 507(4) of the trade act of 1974, 19 USC 2467(4), of workers in a country other than the United States, including any designated zone or area in that country.

(e) Grants or loans to a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United States as the principal market for the public trading of the corporation's stock. As used in this section, "tax haven country" includes a country with tax laws that facilitate avoidance by a corporation or an affiliate of the corporation of United States tax obligations, including Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles.

(7) When the commercialization board approves a grant or a loan under this chapter, the commercialization board shall state the specific objective reasons the applicant was selected over other applicants for a grant or loan under this chapter.

(8) After March 31, 2006, before adopting a resolution that establishes or substantially changes a program operated by the commercialization board, including any fees, charges, or penalties attached to that program, the commercialization board shall give notice of the proposed resolution to the governor, to the secretary of the senate, to the clerk of the house of representatives, to members of the senate and house of representatives standing committees on appropriations, and to each person who requested from the fund in writing or electronically to be notified regarding proposed resolutions. The notice and proposed resolution and all attachments shall be published on the fund's internet website. The commercialization board shall hold a public hearing not sooner than 14 days and not longer than 30 days from the date notice of a proposed resolution is given and offer a person an opportunity to present data, views, questions, and arguments. Commercialization board members or 1 or more persons designated by the commercialization board who have knowledge of the subject matter of the proposed resolution shall be present at the public hearing and shall participate in the discussion of the proposed resolution. The commercialization board may act on the proposed resolution no sooner than 14 days after the public hearing. The commercialization board shall produce a final decision document that describes the basis for its decision. The final resolution and all attachments and the decision document shall be provided to the governor, to the secretary of the senate, to the clerk of the house of representatives, and to members of the senate and house of representatives standing committees on appropriations and shall be published on the fund's internet website.

(9) The notice described in subsection (8) shall include all of the following:

(a) A copy of the proposed resolution and all attachments.

(b) A statement that the addressee may express any data, views, or arguments regarding the proposed resolution.

(c) The address to which written comments may be sent and the date by which comments must be mailed or electronically transmitted, which date shall not be before the date of the public hearing.

(d) The date, time, and place of the public hearing.

**History:** Add. 2005, Act 215, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

**125.2088/ Commercialization board; membership; appointment; terms; vacancy; chairperson, vice-chairperson, and secretary; oath of office; compensation; reimbursement for expenses; organization; quorum; business conducted at public meetings.**

Sec. 88/. (1) The commercialization board shall consist of 19 members, as provided under subsections (2) and (3).

(2) The commercialization board shall include each of the 2 following voting ex officio members:

(a) The director of the department of labor and economic growth or his or her designee from within the department of labor and economic growth.

(b) The state treasurer or his or her designee from within the department of treasury.

(3) The commercialization board shall include the following 17 members appointed by the governor with, except for the individuals described in subdivisions (c) and (d), the advice and consent of the senate:

(a) Seven members representing business with expertise, knowledge, skill, or experience in venture capital investments, business finance, bringing competitive edge technology products to market, or representing a qualified business.

(b) A member representing the Van Andel institute, a Michigan charitable trust, MICS 13607, or a successor organization.

(c) One member appointed from a list of 2 or more individuals selected by the majority leader of the senate representing qualified businesses or persons with business, technological, or financial experience related to competitive edge technology.

(d) One member appointed from a list of 2 or more individuals selected by the speaker of the house of representatives representing qualified businesses or persons with business, technological, or financial experience related to competitive edge technology.

(e) A member representing Michigan state university.

(f) A member representing the university of Michigan.

(g) A member representing Wayne state university.

(h) A member representing western Michigan university.

(i) A member representing Michigan technological university.

(j) A member representing a public university in Michigan other than Michigan state university, the university of Michigan, Wayne state university, western Michigan university, or Michigan technological university.

(k) A member representing automation alley, a Michigan nonprofit corporation incorporated on May 21, 1998, or a successor organization.

(4) Of the members of the commercialization board initially appointed under subsection (3), 5 members shall be appointed for terms expiring on December 31, 2006, 5 members shall be appointed for terms expiring on December 31, 2007, 5 members shall be appointed for terms expiring on December 31, 2008, and 2 members shall be appointed for terms expiring on December 31, 2009. After the expiration of the initial appointment terms provided for by this subsection, members of the commercialization board shall be appointed for terms of 4 years.

(5) For members of the commercialization board appointed under subsection (3), a vacancy on the commercialization board occurring other than by expiration of a term shall be filled in the same manner as the original appointment for the balance of the unexpired term. A member of the commercialization board shall hold office until a successor has been appointed and qualified. A member of the commercialization board is eligible for reappointment. State employees are not eligible to serve as members appointed under subsection (3). As used in this subsection, "state employees" does not include an officer or employee of a state institution of higher education.

(6) The governor shall designate 1 of the members of the commercialization board to serve as its chairperson at the pleasure of the governor. The commercialization board shall select from among its members a member to serve as vice-chairperson and a member to serve as secretary.

(7) Upon appointment to the commercialization board under this section and upon the taking and filing of the constitutional oath of office prescribed in section 1 of article XI of the state constitution of 1963, a member shall enter the office and exercise the duties of the office.

(8) Members of the commercialization board shall serve without compensation, but may be reimbursed for actual and necessary expenses.

(9) Upon the initial appointment of members under this section, the commercialization board shall organize and adopt its own policies, procedures, schedule of regular meetings, and a regular meeting date, place, and time.

(10) The commercialization board may act only by resolution approved by a majority of commercialization board members appointed and serving. A majority of the members of the commercialization board appointed and serving shall constitute a quorum for the transaction of business. The commercialization board shall meet in person or by means of electronic communication devices that enable all participants in the meeting to communicate with each other.

(11) The commercialization board shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and shall be published on the fund's internet website.

**History:** Add. 2005, Act 215, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

**125.2088m Member, employee, or agent of commercialization board; conduct.**

Sec. 88m. (1) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, members of the commercialization board are considered public servants subject to 1968 PA 317, MCL 15.321 to 15.330, and public officers subject to 1973 PA 196, MCL 15.341 to 15.348. An officer or an employee of a state institution of higher education may at the same time also hold the public office of member of the commercialization board as authorized under section 88(3)(d) and the officer or employee shall not be deemed to hold 2 or more incompatible offices at the same time. A member of the commercialization board shall discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of this state, and with the degree of diligence, care, and skill that a fiduciary would exercise under similar circumstances in a like position. In discharging duties of the office, a member of the commercialization board when acting in good faith may rely upon the report of an independent expert or independent peer review expert or upon financial statements of the commercialization board represented to the member of the commercialization board by the officer of the commercialization board having charge of its books or accounts or stated in a written report by the auditor general.

(2) A member of the commercialization board shall not make or participate in making, or in any way attempt to use his or her position as a member of the commercialization board to influence, a matter before the fund board or the commercialization board regarding a loan, grant, or other expenditure under this chapter to his or her employer.

(3) An independent peer review expert shall not have any financial interest in a recipient of investment fund proceeds under this chapter.

(4) A member, employee, or agent of the commercialization board shall not engage in any conduct that constitutes a conflict of interest and shall immediately advise the commercialization board in writing of the details of any incident or circumstances that may present the existence of a conflict of interest with respect to the performance of the commercialization board-related work or duty of the member, employee, or agent of the commercialization board.

(5) A member of the commercialization board who has a conflict of interest related to any matter before the commercialization board shall disclose the conflict of interest before the commercialization board takes any action with respect to the matter, which disclosure shall become a part of the record of the commercialization board's official proceedings. The member with the conflict of interest shall refrain from doing all of the following with respect to the matter that is the basis of the conflict of interest:

(a) Voting in the commercialization board's proceedings related to the matter.

(b) Participating in the commercialization board's discussion of and deliberation on the matter.

(c) Being present at the meeting when the discussion, deliberation, and voting on the matter take place.

(d) Discussing the matter with any other commercialization board member.

(6) Failure of a member to comply with subsection (5) constitutes misconduct in office subject to removal under section 94.

(7) When authorizing expenditures and investments under this act, the commercialization board shall not consider whether a recipient has made a contribution or expenditure under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282.

**History:** Add. 2005, Act 215, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

**125.2088n Audits; reports.**

Sec. 88n. (1) In addition to any audit requirements under section 9, not later than May 1, 2007 and each subsequent May 1, the auditor general shall conduct and report a financial postaudit of the commercialization board, the fund, and the investment fund for the immediately preceding fiscal year. Not less than once every 3 years beginning not later than October 1, 2007, the auditor general shall conduct and report a performance postaudit of the commercialization board, the fund, and the investment fund. The results of the performance postaudit and the postaudit of financial transactions and accounts shall be published on the internet and disseminated by other means in a manner determined by the fund to advise the citizens of this state of the result of the audits. Copies of the audits shall be provided to the governor, the clerk of the house of representatives, the secretary of the senate, and the chairpersons of the senate and house of representatives standing committees on appropriations.

(2) The auditor general may employ an independent public accounting firm to conduct the audits described in this section. The costs of the auditor general or of the independent public accounting firm in conducting the audits described in this chapter shall be funded by money in the 21st century jobs trust fund created in the



Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.256, as provided in an appropriation. Prior to employing the services of an independent public accounting firm under this section, the auditor general shall require the entity to disclose any conflict of interest, criminal convictions, investigations by the internal revenue service or other federal or state taxing body or court, and any pertinent litigation regarding the conduct of the entity.

(3) All contracts approved by the fund for 21st century investments and all contracts approved by the commercialization board for grants or loans under this chapter shall contain a provision that the auditor general has access to the books and records, including financial records and all other information and data relevant to the terms of the contract related to the use of the grant, loan, or 21st century investment.

(4) If the fund board or the commercialization board has a reasonable belief that a breach of contract has occurred, the fund has the right to have the recipient's annual financial statements separately audited by an independent certified public accountant at its sole cost and expense. If the audit reveals that a breach of contract has occurred, the recipient shall reimburse the fund for the fees and expenses incurred to perform the audit.

(5) In addition to any reporting requirements under section 9, not later than March 31, 2007 and each subsequent March 31, the commercialization board and the fund shall report to the governor, the clerk of the house of representatives, the secretary of the senate, and the chairpersons of the senate and house of representatives standing committees on appropriations. The report shall contain all of the following for the immediately preceding fiscal year that are related to a grant or loan made by the fund as determined by the commercialization board:

- (a) A list of entities that received funding, the amount received, and the type of funding.
- (b) The number of new patents, copyrights, or trademarks applied for and issued.
- (c) The number of new start-up businesses.
- (d) The number of new jobs and projected new job growth.
- (e) Amounts of other funds leveraged.
- (f) Money or other revenue or property returned to the investment fund.
- (g) The total number of new licensing agreements by institution and the number of new licensing agreements entered into with Michigan based firms.
- (h) Products commercialized.

(6) Not later than March 31, 2007 and each subsequent March 31, the fund shall report to the governor, the clerk of the house of representatives, the secretary of the senate, and the chairpersons of the senate and house of representatives standing committees on appropriations. The report shall contain all of the following for the immediately preceding fiscal year that are related to a 21st century investment made by the fund board:

- (a) A list of entities that received funding, the amount received, and the type of funding.
- (b) The amount of qualified venture capital fund investments, qualified mezzanine fund investments, and qualified private equity fund investments under management in this state, including year-to-year growth.
- (c) The value of loan enhancement program investments, qualified private equity fund investments, qualified mezzanine fund investments, and qualified venture capital investments in qualified businesses, including year-to-year growth.
- (d) A statement of the amount of money received by or returned to the investment fund under this chapter.
- (e) A statement of the loan enhancement activity of the fund board under this chapter.
- (f) A statement of the amount of money in each loan reserve fund established under the small business capital access program required under this chapter.

(g) Any recommendations for needed changes and any other information the board believes would be of interest to the governor, the legislature, and the public.

(7) As a condition of receiving funding under this chapter, the fund shall require a recipient to agree to provide to the fund the information necessary for the fund to produce the reports required under this section.

**History:** Add. 2005, Act 215, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

### **125.2088o Technology transfer acceleration program.**

Sec. 88o. The fund shall create and operate a program to accelerate technology transfer from Michigan's institutions of higher education to the private sector for commercialization of competitive edge technologies and bioeconomy technologies. The technology transfer acceleration program shall include all of the following:

(a) Encourage and work with the state's public universities to identify the commercial potential in advanced technologies from individual institutions of higher education.

(b) Facilitate the bundling of inventions from individual institutions of higher education into packages that

could be of interest to private sector firms looking for commercialization opportunities.

(c) Encourage business formation efforts in institution of higher education technology transfer offices to increase the number of institution of higher education related start-up companies.

(d) Work with institutions of higher education in encouraging the institutions to provide their faculty with incentives for participating in technology transfer and commercialization activities.

(e) Facilitate the use of the applied research expertise within institutions of higher education by qualified businesses.

**History:** Add. 2005, Act 215, Imd. Eff. Nov. 21, 2005;—Am. 2008, Act 367, Imd. Eff. Dec. 23, 2008.

**Popular name:** Strategic Fund

**125.2088p Michigan life sciences pipeline; establishment; purpose; commencement of operations; awards; selection of pipeline operator; request for proposals; contract; duration; report; "pipeline" defined.**

Sec. 88p. (1) The fund shall establish a Michigan life sciences pipeline to promote the development of businesses in this state engaged in providing goods and services related to the development and commercialization of life sciences. The pipeline shall begin operations not later than June 1, 2006. The pipeline shall do all of the following:

(a) Recruit Michigan-based businesses involved in life sciences research and commercialization and related goods and services to affiliate themselves with the pipeline as members.

(b) Market the services of the pipeline, its members, and life sciences research and commercialization in Michigan to develop and increase the amount of business activity for members of the pipeline.

(c) Otherwise assist members of the pipeline in developing life sciences research and commercialization activities in this state.

(d) Maintain and make available a list of members of the pipeline and services provided by members of the pipeline.

(e) At the discretion of the pipeline, charge members of the pipeline a reasonable fee based on the services provided by the pipeline.

(2) The fund shall encourage a recipient of expenditures under this chapter engaged in the development or commercialization of life sciences in this state to utilize goods or services provided by a member or members of the pipeline.

(3) When making awards under the commercialization, research, and development program established by the commercialization board under section 88k to recipients engaged in the development or commercialization of life sciences in this state, the commercialization board shall provide additional weighting to an applicant that demonstrates a commitment to utilize or collaborate with a member or members of the pipeline when procuring goods or services, if the goods or services are reasonably available from a member or members of the pipeline.

(4) The fund shall select a person or entity to operate the pipeline by issuing a request for proposals. The person or entity selected to operate the pipeline shall demonstrate to the fund the proven ability to do all the following:

(a) Coordinate commercialization of life sciences research initiatives.

(b) Assist life sciences start-up companies.

(c) Market life sciences related activities and capabilities.

(d) Coordinate or operate programs that have a history of ongoing independent peer review.

(e) Have regulatory experience necessary for commercial approval of pharmaceutical and medical devices.

(f) Develop and implement a plan for operating the pipeline.

(5) The fund shall enter into a contract with a duration of not less than 4 years with the person or entity selected to operate the pipeline.

(6) Not later than 5 years after the effective date of the amendatory act that added this section, the person or entity selected to operate the pipeline shall report to the governor, the clerk of the house of representatives, the secretary of the senate, and the chairpersons of the house of representatives and senate standing committees on appropriations on the effectiveness of the pipeline in developing life sciences research and commercialization activities in this state.

(7) As used in this section, "pipeline" means the Michigan life sciences pipeline established in this section.

**History:** Add. 2005, Act 213, Imd. Eff. Nov. 21, 2005.

**Popular name:** Strategic Fund

**125.2088q Centers of energy excellence program; creation; purpose; agreements;**

**application; expenditures; limitation; use of funds; evaluation of applications; establishment of standard process; provisions to be included in agreement; selection of centers manager; duties; definitions.**

Sec. 88q. (1) The fund may create and operate a centers of energy excellence program to promote the development, acceleration, and sustainability of energy excellence sectors in this state. The fund may enter into agreements with 1 or more qualified entities for the designation and operation of a center of energy excellence as provided in subsection (5). Prior to entering into an agreement under this section, 1 or more qualified entities may apply to the fund for an agreement for designation and operation of a center of energy excellence. The application shall be in a form determined by the fund and shall include information the fund determines necessary and appropriate.

(2) The fund board shall not expend more than \$45,000,000.00 of the money appropriated for programs authorized under this chapter from the 21st century jobs trust fund created in the Michigan trust fund act, 2000 PA 489, MCL 12.251 to 12.260, for the centers of energy excellence program. Grants given for the centers of energy excellence program shall only be awarded to for-profit companies for 1 of the following purposes:

(a) Providing a match for foundation funding, federal funding, or international investments of up to 50% of the total project costs.

(b) Supplementing in-kind contributions provided by a person or entity other than this state.

(c) Accelerating the commercialization of an innovative energy technology or process that will be ready to market within 3 years of the effective date of the agreement.

(d) Activities of the center, including, but not limited to, workforce development and technology demonstration.

(3) Not less than 50% of the funds allocated to the centers for energy excellence program shall be used to match foundation funding, federal funding, or international investments. The fund board may authorize investment terms in qualified entities as part of any agreement as provided in subsection (5). Not more than 15% of any grant awarded can be used for administrative costs or overhead by the grantee or any subcontractor hired to implement any portion of the centers for energy excellence agreement. Grants authorized by this section shall be disbursed pursuant to a timeline and progress disbursement schedule included as part of an agreement under this section.

(4) The fund board shall establish a standard process to evaluate applications for an agreement under this section and shall appoint a committee of members of the fund board to assist in the review of applications. The fund or the fund board shall not appoint or designate any person paid or unpaid to a committee to review applications if that person has a conflict of interest with any potential applicants as determined by the office of the chief compliance officer established in section 88i. When determining whether to enter into an agreement under this section, the fund board shall consider all of the following:

(a) The potential that in the absence of an agreement the development, acceleration, and sustainability of energy excellence sectors addressed by the proposed center of energy excellence will occur in a location other than this state.

(b) The extent to which the proposed center of energy excellence will promote the development of energy excellence sectors in this state.

(c) The extent to which the proposed center of energy excellence will promote economic development or job creation in this state.

(d) The extent to which the proposed center of energy excellence could attract private investment or encourage commercialization in energy excellence sectors in this state.

(e) The extent to which the proposed center of energy excellence may leverage skills or resources in which this state possesses a competitive advantage, including, but not limited to, skills of workers, intellectual property, and natural resources.

(f) The extent to which the proposed center of energy excellence may encourage collaboration on commercialization and technology transfer among qualified entities in this state.

(g) The extent to which the proposed center of energy excellence may attract additional federal funding to this state or persons or entities within this state.

(h) The financial viability of the proposed center of energy excellence and the proposed business plan for the center of energy excellence, including, but not limited to, commitments of financial and other support for the proposed center and the potential availability of federal funding for the proposed center.

(i) The financial resources available to the fund board for operation of the centers of energy excellence program under this section.

(j) Any recommendations from the centers manager selected under subsection (6).

(5) If the fund board enters into an agreement with 1 or more qualified entities for the operation of a center of energy excellence, the agreement shall include participation by at least 1 qualified business and at least 1 institution of higher education. An agreement shall include, but is not limited to, all of the following:

- (a) The roles and responsibilities of the fund and the qualified entities participating in the agreement.
  - (b) A governance structure for the center of energy excellence. The agreement may provide for representation of the fund in the governance of the center.
  - (c) The responsibilities of the fund and the qualified entities participating in the agreement, including, but not limited to, financial resources, technology, real property, personal property, or other resources contributed by the parties to the agreement.
  - (d) A commitment by the qualified entities participating in the agreement to collaborate on commercialization and technology transfer opportunities in energy excellence sectors in this state.
  - (e) A commitment by qualified entities that are institutions of higher education to provide incentives for faculty who participate in technology transfer and commercialization activities in energy excellence sectors and expansion of business formation efforts related to energy excellence sectors to increase the number of institution of higher education related start-up companies.
  - (f) A commitment to locate and retain commercialization opportunities resulting from the agreement or center of energy excellence within this state.
  - (g) A business plan for the center of energy excellence that identifies clear and measurable objectives, timelines, and deliverables for the center.
  - (h) The duration of the agreement and a mechanism for the dissolution of the center of energy excellence and the disposition of any assets. The fund board may revoke an agreement for the designation and operation of a center of energy excellence if a qualified entity that is a party to the agreement does not comply with the agreement.
  - (i) Provision for repayment of grants from the fund in the event a qualified entity fails to comply with the agreement.
- (6) The fund board may select a person or entity as a centers manager to assist the fund in the administration of the centers of energy excellence program authorized by this section. Costs associated with the administration of the centers of energy excellence program are subject to section 88b(5). The centers manager shall do all of the following as determined by the fund board:
- (a) Provide administrative services related to the centers of energy excellence program.
  - (b) Act as contract manager on behalf of the fund for any agreement establishing a center of energy excellence under this section.
  - (c) Recommend to the fund board a plan for managing the centers of energy excellence program and implement any plan authorized by the fund board.
  - (d) Assist centers of energy excellence in developing a supply chain for energy excellence sectors.
  - (e) Evaluate and report to the fund board on the centers of energy excellence program and progress made toward commercialization of technology in energy excellence sectors in this state.
  - (f) Review applications submitted under subsection (1) and make recommendations to the fund board on the applications for approval or disapproval of applications.
  - (g) Perform other functions related to the centers for energy excellence program authorized by this section as deemed necessary and appropriate by the fund board.
- (7) As used in this section:
- (a) "Centers manager" means a centers manager selected under subsection (6).
  - (b) "Energy excellence sectors" means new and developing industry sectors in the energy field in this state where the fund has determined the state has a competitive advantage and there are barriers to the commercialization of technology within the new and developing industry sector.
  - (c) "Energy field" means alternative energy technology, energy efficiency technology, technologies that contribute to energy security and independence, other advanced energy technologies, or water technology related to the development of energy excellence sectors.
  - (d) "Qualified entity" means a qualified business, an institution of higher education, a Michigan nonprofit corporation, or a political subdivision of this state.

**History:** Add. 2008, Act 175, Imd. Eff. July 8, 2008.

**Popular name:** Strategic Fund